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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,175	01/31/2001	Mark E. Newbury	1-21	6070
30594	7590	02/11/2004	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			DANIEL JR, WILLIE J	
P.O. BOX 8910			ART UNIT	
RESTON, VA 20195			PAPER NUMBER	
			2686	9

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,175

Applicant(s)

NEWBURY ET AL.

Examiner

Willie J. Daniel, Jr.

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/01/2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

The Detailed Description states "the an" on page 8, line 2. The Examiner suggests that "the" be deleted for clarity purposes of the sentence.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Leung et al. (EP 0701382 A1).

Regarding **Claim 1**, Leung et al. discloses a method of communicating in a cellular communication system (100) which reads on the claimed “hierarchical cellular system” having an inter-layer handoff system (see col. 2, lines 38-50; col. 3, lines 39-45; col. 4, lines 18-27; col.9, line 1 - col. 10, line 8; Figs. 1 and 4), where the communication system can perform inter-layer handoff of a mobile unit, said method comprising the steps of:

determining a cell sojourn time which hereinafter reads on the claimed “timer value” which is a function of the duration that a wireless unit (108) operates within at least a cell of a first layer, said timer value being determined by the inter-layer handoff system (see col. 1, lines 9-12; column 3, lines 6-12, 39-45; col. 10, line 53 - col. 11, line 19; Figs. 1 and 4), where components of the system (i.e., mobile unit) monitors and determines the parameters for inter-layer handoff; and

using (comparing) said the timer value in determining whether said wireless unit is to be handed off to at least a cell of a second layer (see column 3, lines 3-5, 39-45; col. 4, lines 18-

27; col. 12, lines 9-45; Figs. 1 and 4), where the time within a cell is compared to a threshold which determines if handoff should be performed between layers.

Regarding **Claim 2**, Leung et al. discloses a step of starting a timer or monitoring the cell sojourn time of a mobile unit or wireless unit as stated in column 2, lines 23-25;

Fig 3a shows the new cell sojourn time of a wireless unit that was triggered by a hand off which will stop the timer as stated in column 4, lines 42-46 and as shown in Fig. 2.

Regarding **Claim 3**, Leung et al. discloses a step of determining the time a wireless unit is to be handed off from one cell to a second cell of the same layer as stated in column 4, lines 16-20.

Regarding **Claim 4**, Leung et al. discloses a step of using or comparing the amount of time a wireless unit is within a cell as a timer value or threshold as stated in column 4, lines 4-9.

Regarding **Claim 5**, Leung et al. discloses a step to determine the timer value the wireless unit is within a cell as stated in column 2, lines 23-26 and column 3, lines 39-45.

Regarding **Claim 6**, Leung et al. discloses a step of determining the timer value as a function of time that the wireless unit is within a layer as stated in column 2, lines 23-26 and column 3, lines 3-12,39-45.

Regarding **Claim 7**, Leung et al. discloses a step of comparing the timer value to a threshold and handing off to another layer depending on the comparison as stated in column 4, line 12-27 and as shown in Fig. 4.

Regarding **Claim 8**, Leung et al. discloses a step of comparing the timer value to a first threshold and handing off to a layer of smaller cells if the timer value is greater than first threshold as stated column 4, lines 55-57; column 5, lines 2-4; and as shown in Fig. 4.

Regarding **Claim 9**, Leung et al. discloses a step of comparing the timer value to a second threshold and handing off to a layer of larger cells if the timer value is less than the second threshold as stated in column 4, lines 55-57; column 5, lines 2-4; and as shown in Fig. 4

Regarding **Claim 10**, Leung et al. discloses a step of remaining in a current layer if the timer value is less than first threshold and greater than second threshold as stated in column 4, lines 55-58; column 5, lines 1-2,4-7; and as shown in Fig. 4.

Regarding **Claims 11-20**, the claims are rejected for the reasons set forth above in the rejections of claims 1-10. Claims 1-10 serve as the basis for having claims 11-20. The processing circuitry of the claims would be inherent.

Response to Arguments

3. Applicant's arguments filed 01 December 2003 have been fully considered but they are not persuasive. Leung provides support for timer value as admitted by applicant that the base station has aggregated statistics (timer value) for control of the cellular system in which the base station is a component of the cellular system.
4. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., pg. 6, lines 16-17, that "the timer value is determined by the inter-layer handoff system not by the wireless unit", which is not claimed that the timer value is not done by the wireless unit) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., pg. 7, lines 1-2, that "does not include the use of the mobile units or wireless units to determine such value") are not recited in the rejected claim(s). Further, the examiner contends that the wireless unit is a component operating within Leung's system. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Meyer (US 6,175,735) discloses a mobile radio communication system (see Figs. 1 and 2) for handing over a call between a base station and a mobile station in dependence on the dwell time of the mobile station in a radio coverage area and/or in dependence on the duration of the call as stated in column 1, lines 48-50; and as shown in Figs. 3, 4, and 5.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (703) 305-8636. The examiner can normally be reached on 7:30-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on (703) 305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJD,JR/wjd,jr
04 February 2004

Marsha D Banks-Harold
MARSHA D. BANKS-HAROLD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600